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Amendment After Final
Attorney Docket No. S63.2N-11056-US03

Remarks

This Amendment is in response to the Final Office Action dated July 19, 2004. Claims 61, 64, 65, and 68-82 were rejected under 35 USC 112, second paragraph. Claims 61, 64, 65, 68-71, and 76-78 were rejected under 35 USC 102(b) as being anticipated by Fontaine (5,370,683). Claims 72, 73, 79, 80, and 85 were rejected under 35 USC 103(a) as being unpatentable over Fontaine (5,370,683) in view of Sawyer (5,108,417). Claims 74, 75, 81, and 82 were rejected under 35 USC 103(a) as being unpatentable over Fontaine (5,370,683) in view of Marin et al (5,397,355). Claims 86 and 87 were rejected under 35 USC 102(e) as being anticipated by Johnson (5,449,384). Claims 61, 65, 85, and 86 have been amended. No new matter has been added. The rejections will be addressed below under headings consistent with the rejection.

35 USC 112, 2nd paragraph

In the Office Action, claims 61, 64, 65, and 68-82 were rejected under 35 USC 112, second paragraph. Claims 61 and 65 have been amended to address the indefiniteness issues and are believed to be in condition for allowance. Claims 61 and 65 have been amended to remove the "have a cross-section substantially of a two-dimensional disc shape" language and to replace it with "a first portion, a second portion, and a middle portion therebetween, the first portion located further from the longitudinal axis than the second portion, the middle portion being more narrow than the first portion and the second portion in cross-section". Fig. 5C of the original application illustrates the claimed cross-section.

Applicant respectfully requests that the rejection of claims 61, 64, 65, and 68-82 for indefiniteness be withdrawn.

35 USC 102(b)

Claims 61, 64, 65, 68-71, and 76-78 were rejected under 35 USC 102(b) as being anticipated by Fontaine (5,370,683). Regarding the struts or regions of the struts, claims 61 and 65 have been amended to recite "a first portion, a second portion, and a middle portion therebetween, the first portion located further from the longitudinal axis than the second portion, the middle portion being narrower than the first portion and the second portion in cross-section".

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Fontaine does not teach or disclose struts having a middle portion being narrower than the first end portion and the second end portion in cross-section. The Office Action states that the cross-sections of the struts of Fontaine are circular. The claimed strut does not have a circular cross-section. Thus, Fontaine does not anticipate amended claims 61 and 65. Applicant believes claims 61 and 65 are in condition for allowance. Claims 64, 68-71, and 76-78 are believed to be in condition for allowance for at least the reason of being dependent upon claims 61 or 65.

Applicant respectfully requests that the 35 USC 102(b) rejection as being anticipated by Fontaine be withdrawn.

35 USC 103(a)

Claims 72, 73, 79, 80, and 85 were rejected under 35 USC 103(a) as being unpatentable over Fontaine (5,370,683) in view of Sawyer (5,108,417). The Office Action acknowledges that Fontaine fails to disclose a taper. However, as discussed above, Fontaine also does not teach or disclose struts having a middle portion being narrower than the first end portion and the second end portion in cross-section as recited in independent claims 61 and 65. Sawyer does not provide this missing teaching. Thus, claims 72, 73, 79, and 80 are believed to be in condition for allowance for at least the reason of being dependent upon base claims 61 and 65 which are believed to be in condition for allowance.

Regarding claim 85, Applicant asserts that neither Fontaine nor Sawyer teach or suggest the stent tapering from the midpoint to at least one end of the stent at a substantially constant slope in relation to the longitudinal axis. In as much as Sawyer teaches a taper, the taper does not have a substantially constant slope in relation to the longitudinal axis. The stent of Sawyer is a coil stent made from a foil machined from a flat strip. The slope is not substantially constant as the machined foil is then configuring the foil into the shape of a helix. Thus thicker portions are positioned both proximally and distally to thinner portions making the taper of the stent irregular rather than substantially constant as claim 85 requires. For at least this reason claim 85 overcomes the obviousness rejection.

Applicant respectfully requests that the 35 USC 103(a) rejection of claims 72, 73, 79, 80, and 85 be withdrawn.

Claims 74, 75, 81, and 82 were rejected under 35 USC 103(a) as being

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unpatentable over Fontaine (5,370,683) in view of Marin et al (5,397,355). The Office Action acknowledges that Fontaine fails to disclose a taper. However, as discussed above, Fontaine does not teach or disclose struts having a middle portion being narrower than the first end portion and the second end portion in cross-section as taught in independent claims 61 and 65. Marin et al does not provide the missing teaching of struts which are biconcave in cross-section. Thus, claims 74, 75, 81, and 82 are believed to be in condition for allowance for at least the reason of being dependent upon base claims 61 and 65.

Applicant respectfully requests that the 35 USC 103(a) rejection of claims 74, 75, 81, and 82 be withdrawn.

35 USC 102(e)

In the Final Office Action claims 86 and 87 were rejected under 35 USC 102(e) as being anticipated by Johnson (5,449,384). Claim 86 has been amended to recite "a stent comprising a plurality of interconnected struts, portions of the struts having a cross-section which includes a necked region, the stent being of a tubular shape and open at both ends". Johnson does not teach a stent of a tubular shape and open at both ends. Instead the device of Johnson is in an oval shape with struts that converge at one end. Thus, both ends are not open and the device does not have a tubular shape. For at least this reason, the Johnson reference is overcome. Applicant respectfully requests that the 35 USC 102(e) rejection of claims 86 and 87 be withdrawn.

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CONCLUSION

In view of the foregoing it is believed that the present application, with pending claims 61, 64, 65, and 68-87, is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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Date: October 19, 2004

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